

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
EL DORADO DIVISION

JAMES F. BROWN

PETITIONER

VS.

CASE NO. 06-CV-1011

KEN JONES, Sheriff

RESPONDENT

**ORDER**

Before the Court is the Report and Recommendation filed on October 3, 2006, by the Honorable Bobby E. Shepherd, United States Magistrate Judge for the Western District of Arkansas. (Doc. No. 10). Ten (10) days have passed without objections being filed by the parties. The Court hereby adopts *in toto* the magistrate judge's findings and recommendations.

The Court finds that the Petitioner has failed to assert his pending claims and defenses in his ongoing state criminal prosecution. Since Petition has failed to exhaust his available state remedies, this Court will refrain from interfering with the ongoing state prosecution.

Accordingly, the Court finds that the Petitioner's pending petition should be and hereby is dismissed without prejudice to afford Petitioner an opportunity to exhaust all available state remedies.

IT IS SO ORDERED, this 8<sup>th</sup> day of November, 2006.

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/s/Harry F. Barnes  
Hon. Harry F. Barnes  
United States District Judge